

**Minges, Allison**

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**From:** PSC\_Contact  
**Sent:** Wednesday, November 24, 2021 10:27 AM  
**To:** Minges, Allison  
**Subject:** FW: Docket No. 2021-111-G Presiding Officer Report and Proposed Order  
**Attachments:** King v DESC Proposed Order 2021-111-G -- HEARING EXAMINER MUST CONFIRM VERSION SENT TO PARTIES.pdf

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**From:** Stark, David <david.stark@psc.sc.gov>  
**Sent:** Tuesday, November 23, 2021 4:24 PM  
**To:** matthew.gissendanner@dominionenergy.com; hardyking@hardyking.com; Bateman, Andrew <abateman@ors.sc.gov>; Hammonds, Lessie <lhammonds@ors.sc.gov>  
**Cc:** PSC\_Contact <Contact@psc.sc.gov>  
**Subject:** Docket No. 2021-111-G Presiding Officer Report and Proposed Order

Parties:

Please see the attached proposed order which includes my recommendation as the presiding officer to the Commission. Please be advised pursuant to S.C. Reg 103-841, all parties of record have ten days in which to respond to the proposed order. Any responses should be written and filed with the Commission.

Regards,

David Stark  
 Attorney  
 South Carolina Public Service Commission  
[david.stark@psc.sc.gov](mailto:david.stark@psc.sc.gov)

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2021-111-G- ORDER NO. 2021-xxx  
NOVEMBER 23, 2021

IN RE: Hardy King, Complainant/Petitioner v. ) PROPOSED ORDER  
Dominion Energy South Carolina, )  
Incorporated, Defendant/Respondent )

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (Commission) on the Complaint of Hardy King (“Complainant”) against Dominion Energy South Carolina, Incorporated (“DESC” or “Company”). Mr. King brings the Complaint in this matter to assert that he is responsible for some, but not all, of the amount he is being charged for a back charge due to a failed gas meter.

**II. FACTS AND PROCEDURAL HISTORY**

The Complainant, Mr. King, represented himself in the matter, choosing to appear *pro se*. The Respondent, DESC, was represented by Matthew Gissendanner, Esq. The Office of Regulatory Staff (“ORS”), which was automatically a party of record, was represented by Andrew Bateman, Esq. and Lessie Hammonds, Esq.

This docket was initiated by the filing of Mr. King’s complaint on March 26, 2021. Mr. King alleged that his power bills had increased significantly despite there being no change in his home or electricity usage. On April 13, 2021, the Company filed an Answer to the Complaint, along with a Motion to Dismiss. On May 5, 2021, the Commission denied

the Company's motion to dismiss and ordered the setting of new prefiled testimony deadlines for remaining testimony and the scheduling of a hearing. On May 7, 2021, the Clerk's Office set a new procedural schedule requiring DESC and ORS to file direct testimony on or before July 14, 2021, and setting a hearing date of August 17, 2021.

Due to technical issues arising out of atmospheric conditions, the hearing scheduled for August 17, 2021, could not proceed and was rescheduled for September 27, 2021. At this hearing, the Complainant appeared personally in the Offices of the Commission, with DESC counsel and DESC Witness Cindi G. Hux appearing virtually. ORS also appeared virtually at the rescheduled hearing.

At the hearing, it was evident that Mr. King and the Company agree on many relevant facts: Mr. King's natural gas meter malfunctioned or broke and was replaced at a later time, whereupon the Company assessed Mr. King a retroactive charge to his account of \$112.86 to account for the gas that was estimated to have been used by Mr. King, but not billed to him, as calculated by his historic usage. The actual calculations for estimated unbilled gas usage are demonstrated in the spreadsheet entitled "Gas – Zero Usage Calculations," which was attached to DESC Witness Hux's testimony, as well as provided to Mr. King and is attached to this Order as Order Exhibit 1.

It is undisputed that the gas meter on Mr. King's home malfunctioned – as manifested by reading zero usage – in June 2019. The meter read zero therms of usage from June 2019 until May 2020, after which time the meter was replaced with a new one which recorded Mr. King's gas usage appropriately. During the intervening period of time,

Mr. King, who is a subscriber to DESC's Budget Billing Program<sup>1</sup>, had an adjustment to his budget billing amount in January, 2020. It is Mr. King's contention that, since DESC knew or should have known that DESC's meter was defective at the time of his rate adjustment review in January, 2020, that Mr. King should not be responsible for the gas service billed incorrectly between January, 2020 and May, 2020 (at which time a new meter was installed).

The major differences between the parties concern length of time, in unbilled monthly usage, that DESC should be able to recover from the Complainant, and the period of time in which the Complainant should have to pay such amount. Specifically, the parties disagree upon the proper understanding and implementation of S.C. Code of Regs. 103-440. Essentially the argument distills down to the question of (if) DESC should, ought, or must recover 12-months of back-billing for a failed meter pursuant to Reg. 103-440, or whether DESC may recover less than 12-months of back-billing pursuant to Reg. 103-440, and if so, whether such relief is appropriate in this case.

### III. DISCUSSION

As a threshold question, it must be considered whether or not it is permissible for DESC to recover less than 12-months back-billing under the applicable regulations. Reg. 103-440(1) governs fast or slow meters, stating:

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<sup>1</sup> This is a program by which a customer is billed the same dollar amount monthly based on estimated annual gas usage spread evenly throughout the year. The total annual bill is trued up once annually, whereupon any undercollection for gas service is collected from the consumer. This is also the time that the estimated annual gas usage, partitioned into even monthly payments, is updated.

1. Fast or Slow Meters. If the overcharge or undercharge is the result of a fast or slow meter, then the method of compensation shall be as follows:

a. In case of a disputed account, involving the accuracy of a meter, such meter shall be tested upon request of the customer, as specified in regulation 103-472.

b. In the event that the meter so tested is found to have an error in registration of more than two percent, the bill shall be increased or decreased accordingly, if the time at which the error first developed or occurred can be definitely determined. If such time cannot be determined, such correction shall not be made for more than six months.<sup>2</sup>

Whether a meter that has totally failed and is reading zero through-put can be characterized as “slow” is a position taken by Mr. King in his Response to the DESC Petition to Dismiss, wherein he states:

Since SCEG/Dominion employee knocked on my door and told me they were replacing my faulty meter, I am not aware at this time or at that time, whether it was tested or not, but they did claim it was faulty. And according to the bill which they sent to the PSC, it appears that the meter had been slow reading for months and according to them in their Motion

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<sup>2</sup> Regulation 103-440(1).

to Dismiss at least 12 months of slow reading. So based on my interpretation of 103-440, they should have only been allowed to charge me for 6 months, not 12.<sup>3</sup>

Mr. King correctly states that his meter was faulty and that it was, as he points out, having an “error in registration of more than two percent” since it was 100% in error. However, Reg. 103-440(1) is applicable to slow or fast meters as a matter of variance in reading. It is not applicable to a completely failed meter, which would be characterized in the Regulations as a “machine error” as contemplated in Reg. 103-440(6).

DESC contends that, pursuant to Reg. 103-440, it is required to recover the full amount for unbilled usage:

Where, as here, a customer has been undercharged as a result of a human or machine error, Commission Regulation 103-440(6) specifically provides that DESC “*shall* recover the deficient amount.” (Emphasis added.) Commission Regulation 103-440(6), then provides the options for the recovery one of which is for “a maximum period of twelve months.” In other words, Ms. King is responsible for the entire 12 months of undercharges and DESC is required by law to collect this amount; the Company has no discretion.<sup>4</sup>

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<sup>3</sup> Hardy King Response to DESC Motion to Dismiss, filed April 21, 2021: <https://dms.psc.sc.gov/Attachments/Matter/8f84827e-a0d3-416c-8ea3-c26aa6ce15e8>

<sup>4</sup> DESC Motion to Dismiss filed, April 13, 2021: <https://dms.psc.sc.gov/Attachments/Matter/9a8b43df-7a62-45b0-a0ea-0f4bc18a1f42>

During the hearing, Mr. King asserted that Reg. 103-440(6) means that DESC may recover up to 12 months of unbilled or underbilled usage. As Mr. King notes, Reg. 103-440(6)(a) and (b) read, respectively:

- a. If the interval during which a customer was undercharged can be determined, then the gas utility **may** collect the deficient amount incurred during that entire interval **up to** a maximum period of twelve months.
- b. If the full interval during which a customer was undercharged cannot be determined, then the gas utility **may** collect only the deficient amount of that portion of the interval that can be determined **up to** a maximum period of twelve months. (emphasis added)

Whether the utility is required to recover for deficient billing for 12-months, or whether the utility is merely entitled to recover, at its discretion, for 12-months of deficient billing – is a functionally moot point. In this case, DESC has manifestly stated that it wishes to recover 12-months of billing, which is within its right – discretionary or not – under the Regulations.

Notwithstanding the recovery of 12-months of deficient billing, there is the outstanding issue that Mr. King must be afforded the opportunity to pay the deficient amount over the same period of time that the deficiency occurred, pursuant to Reg. 103-

440(6)(c).<sup>5</sup> Since the deficient billing occurred over 12-months, the opportunity for Mr. King to pay over 12-months the under-billed amount must be offered to him.

**IV. FINDINGS OF FACT**

1. Mr. King's gas meter was not functioning from June 2019 until May 2020.
2. DESC reasonably estimated the underbilling of Mr. King's account from June 2019 until May 2020.
3. Mr. King was underbilled approximately \$112.86 between June 2019 and May 2020.
4. DESC failed to offer Mr. King an opportunity to pay the underbilled amount of \$112.86 over a period of 12 months.

**V. CONCLUSIONS OF LAW**

1. DESC is entitled, pursuant to Reg. 103-440(6), to recover \$112.82 of deficiently billed gas service to Mr. King which occurred between June 2019 and May 2020.
2. Mr. King is entitled, pursuant to Reg. 103-440(6)(c), to pay in equal portions the amount subject to recovery by DESC over 12 billing periods.

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<sup>5</sup> Reg. 103-440(6)(c) states: The customer shall be allowed to pay the deficient amount, in equal installments added to the regular monthly bills, over the same number of billing periods which occurred during the interval the customer was subject to pay the deficient amount.



**VI. ORDERING PROVISIONS**

**IT IS THEREFORE ORDERED:**

1. DESC shall return all funds improperly billed to Mr. King related to correction for the failed meter.
2. DESC shall collect \$112.82 from Mr. King for gas service that was not properly billed due to machine error.
3. DESC shall offer Mr. King the opportunity to pay the correctly assessed \$112.82 back billing in 12 equal payments over 12 billing periods.
4. Mr. King shall be liable to DESC for the \$112.82 owed to the Company, and he may choose to pay it in whole, or in installments up to a maximum of 12 equal payments over 12 billing periods.
5. All other outstanding motions not specifically approved in this Order are denied.
6. This Order shall remain in full force and effect until further order of the Commission.

**BY ORDER OF THE COMMISSION:**

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Justin T. Williams, Chairman  
Public Service Commission of  
South Carolina

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